

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 6870 of 1999

to

FIRST APPEAL No 6888 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  
2. To be referred to the Reporter or not? : NO
  
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  
5. Whether it is to be circulated to the Civil Judge? : NO

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SPECIAL LAND ACQUISITION OFFICER

Versus

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ZAVERVGAU KARSANBHAI

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Appearance:

MR KG SHETH, AGP for Petitioners

MR PRASHANT MANKAD, for Respondents

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CORAM : MR.JUSTICE M.H.KADRI

and

MR.JUSTICE C.K.BUCH

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Date of decision: 10/05/2000

1. Appellants have filed these appeals under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Code of Civil Procedure, 1908, against common judgment and award dated 7th November, 1998 passed by the learned 2nd Extra Asstt. Judge, Baroda in a group of Land Acquisition Reference Nos. 332/96 to 350/96. As common questions of facts and law arise for our consideration, we propose to dispose of all these appeals by this common judgment.

2. Agricultural lands of respondents situated at village Anastu, Ta : Karjan, were acquired for the purpose of Narmada Canal Project pursuant to issuance of notification under sec. 4(1) of the Act, which came to be published in the Government Gazette on 2nd July, 1992. After following usual procedure under the Act, declaration under Section 6 of the Act was made which came to be published in Govt. Gazette on 24th August, 1992. Respondents were served with notices under sec.9(3)(4) of the Act. Respondents, in response to the notices, lodged their claim before the Land Acq. Officer and claimed compensation for their acquired lands at the rate of Rs.26.00 per sq.mt. Land Acq. Officer, on the basis of material placed before him, made his award on 6th June, 1994 and offered compensation to the claimants in respect of acquired lands of village Anastu at the rate of Rs.7.20 per sq.mt. for irrigated lands and Rs. 4.80 per sq.mt. for non-irrigated lands.

3. The respondents- claimants were of the opinion that the compensation offered by the Land Acquisition Officer was inadequate. Therefore, they submitted applications in writing under Section 18 of the Act requiring the Land Acquisition Officer to refer the applications to the Court for determination of adequate compensation. Accordingly, references were made to the District Court, Baroda, which were numbered as Land Acquisition Reference Nos. 332/96 to 350/96. All the Land Acquisition References came to be consolidated and the parties led common evidence in Land Acq. Reference No.332/96. Before the Reference Court also, the claimants claimed compensation at the rate of Rs. 40.00 per sq.mt. To substantiate their claim for enhanced compensation, claimant of Land Acq. Reference No. 334/96 namely Dineshchandra Shantilal was examined at exh.15. Respondents -claimants also produced documentary evidence such as certified copies of 7/12 extracts at exh.21 to 38. Respondents also produced price list of Anastu Multi-purpose Co.Op. Society Ltd. showing price

list of agricultural produce such as cotton, tuver. 7/12 extracts produced by respondents indicated that all the lands were irrigated lands. Appellant examined Minaxiben Nanjibhai Gandhi who at the relevant time, was serving as Deputy Mamlatdar in the office of Land Acq. Officer, Bharuch. Reference Court, on appreciation of evidence led by the parties, deduced that all agricultural lands acquired belonging to the respondents were irrigated lands, that the compensation offered by Land Acq. Officer was grossly inadequate looking to the income derived by the respondents out of sale of agricultural produce. Reference Court, after taking into consideration fertility, situation of the acquired lands, determined the market value of the acquired lands treating them as irrigated lands at the rate of Rs.15.20 per sq.mt. which has given rise to filing of these appeals by the appellants.

4. Learned AGP Mr. K.G.Sheth as well as learned counsel Mr. Mankad appearing for the respondents claimants have supplied relevant evidence and documents for deciding present appeals. We have perused the copies of evidence and relevant documents supplied by learned AGP Mr. Sheth as well as learned counsel Mr. Prashant Mankad appearing for the respondents claimants.

5. Learned AGP Mr. Sheth has submitted that determination of market value by the Reference Court is on a higher side and is based on guess work and conjectures. It is submitted by the learned counsel for the appellants that even though the respondents had not led sufficient evidence in support of their claim of enhanced compensation, Reference Court had erred in awarding enhanced compensation at the rate of Rs. 8.00 per sq.mt. for irrigated lands. Counsel for the appellants submitted that the compensation determined by the Reference Court was arbitrary and on higher side and, therefore, these appeals be admitted and allowed.

6. We do not find any merits in the contentions raised by learned AGP Mr. Sheth. Evidence of the claimants indicated that the agricultural lands of village Anastu were having high fertility and the claimants were raising crops of cotton and tuver. Witness Dineshchandra - exh.15, deposed that they were getting net income of Rs. 10,000/ to Rs. 11,000/ per annum per vigha out of sale of agricultural produces. Evidence of witness Dineshchandra gets support from the certified copies of 7/12 extracts produced during his deposition. Evidence of witness Dineshchandra was not seriously challenged on behalf of the appellants with

regard to crop income. Appellants had led no evidence to counter the claim raised by the respondents. In our opinion, sufficient evidence was led by the respondents to justify the claim of enhanced compensation. Thus, this is not a case of total lack of evidence. Respondents had lost their only source of livelihood due to compulsory acquisition of their agricultural lands and, therefore, it should be the anxiety of the Court to award just and adequate compensation to the claimants for their acquired lands. In our opinion, Reference Court has awarded just and adequate compensation to the claimants for their acquired lands.

7. It may be stated that the agricultural lands of same village Anastu came to be acquired for the same public purpose of Narmada Canal Project vide notification issued under sec.4(1) of the Act on 14th May, 1992 at the rate of Rs. 15.20 per sq.mt. Determination of market value at the rate of Rs. 15.20 per sq.mt. was challenged in the High Court in First Appeal Nos. 4431/99 to 4446/99, wherein Division Bench ( Coram : M.H.Kadri & D.P.Buch, JJ ) by the judgment dated 20th April, 2000 had confirmed the determination of market value of the irrigated lands of village Anastu at the rate of Rs. 15.20 per sq.mt. Thus, it becomes evident that for the acquired lands of the same village, market value at the rate of Rs. 15.20 per sq.mt. as on 14th May, 1992 had become final. Present lands which are subject matter of these appeals, were placed under acquisition by issuance of sec.4(1) notification on 2nd July, 1992 i.e. after about 2 months of previous notification. Reference Court had, in our opinion, committed no error in awarding compensation of the acquired lands at the rate of Rs. 15.20 per sq.mt. In our opinion, Reference Court had awarded just, adequate and reasonable compensation to the respondents for their acquired lands situated at village Anastu. We, therefore, confirm the determination of the market value of the present acquired lands of village Anastu at the rate of Rs. 15.20 per sq.mt. The statutory benefits extended to the respondents under the provisions of Sections 23(1-A), 23(2) and interest under Section 28 are also just and proper and does not call for any interference in these appeals. However, we make it clear that respondents shall not be entitled to solatium on the amount under sec.23(1-A) of the Act and interest on the amount of solatium as per the decision of the Supreme Court reported in JT 1995(2) SC 583.

8. For the foregoing reasons, all the appeals fail and are dismissed with no order as to costs.

10.5.2000 [ M.H. KADRI, J ]

[ C.K. BUCH, J ]

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